

1 CENTER FOR DISABILITY ACCESS
2 Amanda Seabock, Esq., SBN 289900
3 Prathima Price, Esq., SBN 321378
4 Dennis Price, Esq., SBN 279082
5 Mail: 8033 Linda Vista Road, Suite 200
6 San Diego, CA 92111
7 (858) 375-7385; (888) 422-5191 fax
8 amandas@potterhandy.com

9
10 Attorneys for Plaintiff

11
12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15
16

17 **Scott Johnson**

18 Plaintiff,
19 v.
20 **MMLONG LP**, a California Limited
21 Partnership;
22 **MM Properties Manager LLC**, a
23 California Limited Liability
24 Company;
25 **Trax Auto Wholesale, Inc.**, a
26 California Corporation

27 Defendants.

28 **Case No.**

29 **Complaint For Damages And**
30 **Injunctive Relief For Violations**
31 **Of: Americans With Disabilities**
32 **Act; Unruh Civil Rights Act**

33 Plaintiff Scott Johnson complains of MMLONG LP, a California Limited
34 Partnership; MM Properties Manager LLC, a California Limited Liability
35 Company; Trax Auto Wholesale, Inc., a California Corporation; and alleges as
36 follows:

37
38 **PARTIES:**

39 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
40 level C-5 quadriplegic. He cannot walk and has significant manual dexterity
41 impairments. He uses a wheelchair for mobility and has a specially equipped

1 van.

2 2. Defendants MMLONG LP and MM Properties Manager LLC owned the
3 real property located at or about 4301 S El Camino Real, San Mateo,
4 California, between November 2020 and July 2021.

5 3. Defendants MMLONG LP and MM Properties Manager LLC own the
6 real property located at or about 4301 S El Camino Real, San Mateo,
7 California, currently.

8 4. Defendant Trax Auto Wholesale, Inc. owned Trax Auto Wholesale
9 located at or about 4301 S El Camino Real, San Mateo, California, between
10 November 2020 and July 2021.

11 5. Defendant Trax Auto Wholesale, Inc. owns Trax Auto Wholesale
12 located at or about 4301 S El Camino Real, San Mateo, California, currently.

13 6. Plaintiff does not know the true names of Defendants, their business
14 capacities, their ownership connection to the property and business, or their
15 relative responsibilities in causing the access violations herein complained of,
16 and alleges a joint venture and common enterprise by all such Defendants.
17 Plaintiff is informed and believes that each of the Defendants herein is
18 responsible in some capacity for the events herein alleged, or is a necessary
19 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
20 the true names, capacities, connections, and responsibilities of the Defendants
21 are ascertained.

22

23 **JURISDICTION & VENUE:**

24 7. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 8. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiff's cause of action arose in this district.

6

7 **FACTUAL ALLEGATIONS:**

8 10. Plaintiff went to Trax Auto Wholesale in November 2020 and July 2021
9 (three times) with the intention to avail himself of its goods or services
10 motivated in part to determine if the defendants comply with the disability
11 access laws.

12 11. Trax Auto Wholesale is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
15 to provide wheelchair accessible paths of travel in conformance with the ADA
16 Standards as it relates to wheelchair users like the plaintiff.

17 13. Trax Auto Wholesale provides paths of travel to its customers but fails
18 to provide wheelchair accessible paths of travel in conformance with the ADA
19 Standards.

20 14. A problem that plaintiff encountered was there were unramped steps
21 leading to the office entrance.

22 15. Plaintiff believes that there are other features of the paths of travel that
23 likely fail to comply with the ADA Standards and seeks to have fully compliant
24 paths of travel for wheelchair users.

25 16. On information and belief, the defendants currently fail to provide
26 wheelchair accessible paths of travel.

27 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
28 to provide accessible parking in conformance with the ADA Standards as it

1 relates to persons like the plaintiff.

2 18. Trax Auto Wholesale provides parking to its customers but fails to
3 provide wheelchair accessible parking.

4 19. A problem that plaintiff encountered was that there was no wheelchair
5 accessible parking whatsoever available for persons with disabilities.

6 20. Plaintiff believes that there are other features of the parking that likely
7 fail to comply with the ADA Standards and seeks to have fully compliant
8 parking.

9 21. On information and belief, the defendants currently fail to provide
10 accessible parking.

11 22. The failure to provide accessible facilities created difficulty and
12 discomfort for the Plaintiff.

13 23. These barriers relate to and impact the plaintiff's disability. Plaintiff
14 personally encountered these barriers.

15 24. As a wheelchair user, the plaintiff benefits from and is entitled to use
16 wheelchair accessible facilities. By failing to provide accessible facilities, the
17 defendants denied the plaintiff full and equal access.

18 25. The defendants have failed to maintain in working and useable
19 conditions those features required to provide ready access to persons with
20 disabilities.

21 26. The barriers identified above are easily removed without much
22 difficulty or expense. They are the types of barriers identified by the
23 Department of Justice as presumably readily achievable to remove and, in fact,
24 these barriers are readily achievable to remove. Moreover, there are numerous
25 alternative accommodations that could be made to provide a greater level of
26 access if complete removal were not achievable.

27 27. Plaintiff will return to Trax Auto Wholesale to avail himself of its goods
28 or services and to determine compliance with the disability access laws once it

1 is represented to him that Trax Auto Wholesale and its facilities are accessible.
 2 Plaintiff is currently deterred from doing so because of his knowledge of the
 3 existing barriers and his uncertainty about the existence of yet other barriers
 4 on the site. If the barriers are not removed, the plaintiff will face unlawful and
 5 discriminatory barriers again.

6 28. Given the obvious and blatant nature of the barriers and violations
 7 alleged herein, the plaintiff alleges, on information and belief, that there are
 8 other violations and barriers on the site that relate to his disability. Plaintiff will
 9 amend the complaint, to provide proper notice regarding the scope of this
 10 lawsuit, once he conducts a site inspection. However, please be on notice that
 11 the plaintiff seeks to have all barriers related to his disability remedied. See
 12 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 13 encounters one barrier at a site, he can sue to have all barriers that relate to his
 14 disability removed regardless of whether he personally encountered them).

15

**16 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 17 WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all
 18 Defendants.) (42 U.S.C. section 12101, et seq.)**

19 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 20 again herein, the allegations contained in all prior paragraphs of this
 21 complaint.

22 30. Under the ADA, it is an act of discrimination to fail to ensure that the
 23 privileges, advantages, accommodations, facilities, goods and services of any
 24 place of public accommodation is offered on a full and equal basis by anyone
 25 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 26 § 12182(a). Discrimination is defined, *inter alia*, as follows:

27 a. A failure to make reasonable modifications in policies, practices,
 28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or
2 accommodations to individuals with disabilities, unless the
3 accommodation would work a fundamental alteration of those
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
7 defined by reference to the ADA Standards.
8 c. A failure to make alterations in such a manner that, to the
9 maximum extent feasible, the altered portions of the facility are
10 readily accessible to and usable by individuals with disabilities,
11 including individuals who use wheelchairs or to ensure that, to the
12 maximum extent feasible, the path of travel to the altered area and
13 the bathrooms, telephones, and drinking fountains serving the
14 altered area, are readily accessible to and usable by individuals
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 31. When a business provides paths of travel, it must provide accessible
17 paths of travel.

18 32. Here, accessible paths of travel have not been provided in conformance
19 with the ADA Standards.

20 33. When a business provides parking, it must provide accessible parking.

21 34. Here, accessible parking has not been provided in conformance with the
22 ADA Standards.

23 35. The Safe Harbor provisions of the 2010 Standards are not applicable
24 here because the conditions challenged in this lawsuit do not comply with the
25 1991 Standards.

26 36. A public accommodation must maintain in operable working condition
27 those features of its facilities and equipment that are required to be readily
28 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

1 37. Here, the failure to ensure that the accessible facilities were available
2 and ready to be used by the plaintiff is a violation of the law.

3

4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
6 Code § 51-53.)

7 38. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
10 that persons with disabilities are entitled to full and equal accommodations,
11 advantages, facilities, privileges, or services in all business establishment of
12 every kind whatsoever within the jurisdiction of the State of California. Cal.
13 Civ. Code § 51(b).

14 39. The Unruh Act provides that a violation of the ADA is a violation of the
15 Unruh Act. Cal. Civ. Code, § 51(f).

16 40. Defendants’ acts and omissions, as herein alleged, have violated the
17 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
18 rights to full and equal use of the accommodations, advantages, facilities,
19 privileges, or services offered.

20 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
21 discomfort or embarrassment for the plaintiff, the defendants are also each
22 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
23 (c).)

24 42. Although the plaintiff encountered frustration and difficulty by facing
25 discriminatory barriers, even manifesting itself with minor and fleeting
26 physical symptoms, the plaintiff does not value this very modest physical
27 personal injury greater than the amount of the statutory damages.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. For equitable nominal damages for violation of the ADA. See
9 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
10 and any other equitable relief the Court sees fit to grant.

11 3. Damages under the Unruh Civil Rights Act, which provides for actual
12 damages and a statutory minimum of \$4,000 for each offense.

13 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
14 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16 Dated: September 27, 2021

17 CENTER FOR DISABILITY ACCESS

18 By: 

20 Amanda Seabock, Esq.
Attorney for plaintiff